IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD

HON'BLE Mr. JUSTICE R. SUBHASH REDDY

Writ Petition No.5365 of 2002

Dated: July 5, 2006

Between:

Y. Kullayappa, S/o. Pakkerappa, 45 years,
R/o. Tatireddipalli, Lingala Mandal, Cuddapah District.

… Petitioner

And

The Superintending Engineer, Roads & Buildings,
Cuddapah, and others.

… Respondents

Order:

This writ petition has been filed seeking a Writ of Mandamus to declare the action of the respondents in trying to lay a road across the petitioner's land in Sy.No.351/2 of Komannuthala Village, Lingala Mandal, Cuddapah District, without following due process of law, as illegal and arbitrary.

2. The case of the petitioner is that he is the owner and

possessor of land to an extent of Ac.3.16 cents, covered by Sy.No.35/2 of Komannuthala Village, Lingala Mandal, Cuddapah District and in the said land he had raised Orange orchard in the said land and the land consists of fruit-bearing trees. It is stated that he had borrowed money from the land mortgage bank to purchase motor etc. The grievance of the petitioner is that the respondents are trying to lay a road across the aforesaid land without following due process of law. Precisely, it is the case of the petitioner that in the absence of obtaining any consent from him, and without acquiring the said land as per the provisions of the Land Acquisition Act, 1894 ('the Act' for brevity), respondents cannot deprive him of his land except by due process of law.

3. Counter affidavit has been filed by the first respondent stating that the government had sanctioned Rs.9.26 lakhs under Food for Work Programme to form a road from Km.22/4 to 25/0 from Chinnakudala to Velidandandla via Kommanuthula. The said work was entrusted to a contractor by calling for tenders. It is further stated that before laying the road, the respondents requested the landowners, including the petitioner, to spare their land for formation of the road and all the landowners accepted the said proposal before the village elders and thereafter, road has been formed from Km.22/4 upto the land of the petitioner. It is further stated that the petitioner, having agreed to spare his land for the purpose of forming the road, approached this Court and obtained interim orders not to interfere with his land.

4. As alleged by the petitioner, no consent appears to have been taken from him before proposing to lay the road through his land. Though the respondents have stated in the counter affidavit that the

petitioner has agreed in front of the villagers to spare his land, unless there is an express consent from the petitioner in writing, the petitioner cannot be deprived of his land, which is a private one.

5. In that view of the matter, I dispose of the writ petition directing the respondents to seek consent in writing from the petitioner for formation of the proposed road through his land. If the petitioner gives his consent to spare his land, in writing, it is open for the respondents to proceed with formation of the road. In case the petitioner refuses to give such consent, the respondents may notify the land of the petitioner as required under the provisions of the Act and only then, the respondents shall proceed with formation of the road. Till such time, petitioner shall not be dispossessed from the aforesaid land except by due process of law.

6. The writ petition is disposed of with the foregoing directions. No order as to costs.

JUSTICE R. SUBHASH REDDY.

July 5, 2006
MRR